

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

Philip Shuler,) C/A No. 5:19-cv-00126-SAL-KDW
)
 Plaintiff,)
)
 vs.)
)
 South Carolina Department of Corrections;)
 Warden Donald Beckwith, individually)
 and/or in his official capacity as warden at)
 Wateree River Correctional Institution;)
 Associate Warden Tonya James, individually)
 and/or in her official capacity as associate)
 warden and/or major of security at Wateree)
 River Correctional Institution; and Major)
 James Wakeley, individually and/or in his)
 official capacity as an employee of SCDC;)
 and Shamika Rowley;)
)
 Defendants.)
)

**DEFENDANTS SOUTH CAROLINA
DEPARTMENT OF CORRECTIONS,
BECKWITH, JAMES AND WAKELEY'S
NOTICE OF MOTION AND MOTION
TO FILE UNDER SEAL**

Defendants South Carolina Department of Corrections, Beckwith, James, and Wakeley, by and through their undersigned counsel, and with consent of all other parties, hereby move for leave, pursuant to Local Civil Rule 5.03, to file under seal these Defendants' exhibit filed as Entry #80-8, (Confidential Deposition Excerpts of Plaintiff deemed confidential by prior order) to these Defendants' Motion for Summary Judgment (Entry #80). These Defendants request to file from Plaintiff's deposition of December 10, 2019, specifically p.10, lines 5-19, p. 11 lines 15-25; p. 13 lines 9-24; p. 17 lines 9-15; p. 18 lines 5-13; p. 26 lines 7-25 and p. 27 lines 1-24; and p. 28 lines 16-25 and p. 29 lines 3-25.

The deposition of the Plaintiff was deemed confidential subject to a confidentiality order

approved by this court (Entry #28). In addition, so as not to potentially endanger the Plaintiff who remains incarcerated, through dissemination of his testimony, this documentation should remain confidential.

This Court granted a similar order regarding Plaintiff's prior sworn testimony submitted in camera as an exhibit to Defendant Rowley's motion for summary judgment (Entry 73). The proposed documents will be submitted in camera to the court and by copy to counsel for all parties.

Deeming this material confidential and allowing its submission under seal in no way impairs the public's right of access to court proceedings. The materials therein are particular to Plaintiff's claims in his lawsuit and in no way implicate a larger public interest. Concern for Plaintiff's safety outweighs any inconvenience to the public. There is no less drastic means to allow submission of these materials and protect the Plaintiff. Redaction will not sufficiently conceal the individuals referenced by the Plaintiff. These Defendants assert that the information therein is pertinent to their defense and should be accessible to the Court.

While there is "a common law right to inspect and copy judicial records and documents," that right is "not absolute." *In re Knight Pub. Co.*, 743 F.2d 231, 235 (4th Cir. 1984), *citing Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 597, 98 S.Ct. 1306, 1311 (1978). The Fourth Circuit stated in Knight, "[t]he trial court has supervisory power over its own records and may, in its discretion, seal documents if the public's right of access is outweighed by compelling interests." *Id.* In analyzing whether or not to exercise that power, a trial court should consider "whether release would enhance the public's understanding of an important historical event; and whether the public has already had access to the information contained in the records." *Id.*

There is no overwhelming public interest in these materials. Indeed, all discovery conducted

to date has been under the auspices of a confidentiality order and not subject to public review.

CONCLUSION

Therefore, based on the above, these Defendants, with the consent of counsel for all parties, requests that these materials be filed by the Court under seal.

Respectfully submitted,

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Beckwith, James and Wakeley*

s/ Lisa A. Thomas
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